

DAVID A. PROVINSE

IBLA 79-354

Decided January 8, 1980

Appeal from decision of the Montana State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offers M 43025 and M 43026.

Affirmed.

1. Oil and Gas Leases: Discretion to Lease -- Oil and Gas Leases: Lands Subject to -- Withdrawals and Reservations: Generally

An oil and gas lease offer for minerals reserved to the United States is properly rejected where the Secretary of the Interior in a notice published in the Federal Register has declared that such minerals will not be subject to leasing.

APPEARANCES: David A. Provinse, pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

David A. Provinse has appealed from a decision of the Montana State Office, Bureau of Land Management (BLM), which rejected noncompetitive oil and gas lease offers M 43025 and M 43026 because the reserved minerals in the lands described in those offers are not subject to oil and gas leasing pursuant to the approved classification agreement with respect to lands in the Sun River Winter Elk Range. 29 FR 1483 (Jan. 29, 1964). This notice, signed by the Secretary, expressly precludes the issuance of oil and gas leases for the minerals reserved to the United States in the lands described in the subject offers.

[1] In view of the fact that the Federal Register notice was signed by the Secretary, this Board's function is limited to determining whether the action under review is consistent with that notice. See Kenneth H. Bunch, 37 IBLA 346 (1978); Nola Grace Ptasynski, 28 IBLA 256 (1976); L. A. Walstrom, Jr., 25 IBLA 186 (1976); Molybdenum Corp. of America, 12 IBLA 339 (1973); see also Warner Bergman (On Reconsideration), 31 IBLA 21 (1977). We will affirm a decision rejecting an oil and gas lease offer for lands on which leasing is precluded under a cooperative agreement signed by the Secretary. See James Donoghue, 24 IBLA 210, (1976); Richard K. Todd, 68 I.D. 291 (1961), aff'd, Duesing v. Udall, 350 F.2d 749 (D.C. Cir. 1965), cert. denied, 383 U.S. 912 (1966).

Appellant argues that because the subject lands, Group II in the notice, are reserved mineral interests in patented lands, they are not "coordination" lands within the meaning of 43 CFR 192.9 (1964), the regulation cited in the Federal Register notice as authority for precluding oil and gas leasing on these lands. Appellant then argues that the notice therefore does not affect the subject land. This argument is without merit. The notice expressly precludes oil and gas leasing of the reserved minerals, an action which is a proper exercise of the Secretary's discretionary authority over the issuance of oil and gas leases. See Duesing v. Udall, supra; James Donoghue, supra; see generally, Udall v. Tallman, 380 U.S. 1 (1965).

Appellant raises a number of other arguments which question the factual basis for the determination not to issue oil and gas leases for the subject lands as well as the continued need for such a policy in view of the fact that the State of Montana leases lands within the same area. However, these arguments are misdirected. The appropriate procedure for seeking such a change is to petition the Secretary for reconsideration of this 1964 agreement. The filing of the lease applications did not constitute such a petition, nor may these appeals serve as such a petition. Because BLM was not authorized to issue oil and gas leases in the area in question, the offers were properly rejected. 1/ James Donoghue, supra.

1/ We note that the offers must be rejected and cannot be held pending for possible future availability of the land. 43 CFR 2091.1(e); James Donoghue, supra at 215.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joan B. Thompson
Administrative Judge

We concur:

Frederick Fishman
Administrative Judge

James L. Burski
Administrative Judge

